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Attorneys for Plaintiff

6  
7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 MARIELLEN M. WALLACE, individually;  
10 Plaintiff,

CASE NO.: 2:10-cv-01855

11 v.

12 USAA LIFE GENERAL AGENCY, INC., a  
foreign corporation; DOES I through X and  
13 ROE CORPORATIONS I through X,  
inclusive;

14 Defendants.

15 **AND ALL RELATED CLAIMS**

16 1950.023916 - tm

17 **MOTION IN LIMINE #1**

18 COMES NOW Plaintiff/Counter-Defendant Mariellen Wallace by and through her counsel  
19 John Peter Lee, Ltd., and hereby files her Motion in Limine. This Motion is made and based upon  
20 all of the pleadings and papers on file herein, the attached Memorandum of Points and Authorities,  
21 and oral argument, if required by the Court.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

**JOHN PETER LEE, LTD.**  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS.**

The parties hereto (collectively the “Parties”), Plaintiff Mariellen M. Wallace (hereinafter “Wallace”) and Defendant USAA Life Insurance Company, Inc. (hereinafter “USAA”), stipulated to a discovery plan and scheduling order (hereinafter “Scheduling Order”) on or about December 13, 2010, which became an order of the Court on or about December 16, 2010. (#11). The last day for discovery pursuant to the Scheduling Order was July 19, 2011. (#11).

On or about January 7, 2011, USAA served Wallace with a copy of Defendant/Counter-claimant, USAA Life Insurance Company Inc.’s Required Initial Disclosure Pursuant to Fed. Rule Civ. P. 26(a)(1) (hereinafter “USAA’s Initial Disclosure”). Exhibit “1”. USAA named twenty one (21) witness in USAA’s Initial Disclosure, none of which were insurance policy underwriters.

On or about February 17, 2011, USAA submitted on behalf of the Parties a Joint Interim Status Report. (#12). In that report the Parties reported to the Court that “[t]he [P]arties will continue with discovery and will follow all deadlines outlined in the Scheduling Order [emphasis added].” (#12). On or about May 18, 2011, Wallace submitted on behalf of the Parties another Interim Status Report whereby the Parties, again, reported to the Court that “[t]he [P]arties will continue with discovery and follow all deadlines outlined in the Scheduling Order [emphasis added].” (#13).

On or about June 9, 2011, USAA supplemented its list of witnesses pursuant to Rule 26(a)(1), naming eight (8) additional witnesses, none of which are insurance policy underwriters. Exhibit “2”. On or about July 19, 2011, USAA again supplemented its Rule 26(a)(1) required disclosures naming no additional witnesses.<sup>1</sup> Exhibit “3”.

In USAA’s Initial Disclosure and supplemental disclosures, USAA named only two witnesses by specific name that are “likely to have discoverable information that [USAA] may use

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<sup>1</sup>USAA’s second supplement pursuant to Rule 26(a)(1) is erroneously designated as the third supplement.

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1 to support its claims or defenses, unless solely for impeachment”: (1) Merriellen M. Wallace, the  
 2 plaintiff and beneficiary of the subject policy; and (2) Alice Gearhart, USAA Life/Annuity Claims  
 3 and Benefits Advisor. Exhibits “1” through “3”. The remaining twenty seven (27) witnesses named  
 4 by USAA are designated as “Custodian of Records and/or Person Most Knowledgeable,” twenty six  
 5 (26) designating medical/pharmaceutical providers who provided treatment, medication or diagnoses  
 6 for the decedent, and one (1) designated for an insurance provider other than USAA. Id. None of  
 7 USAA’s designated witnesses are insurance policy underwriters. Id. Moreover, the only witness  
 8 in this case that is an agent of USAA holds the title of “Life/Annuity Claims and Benefits Advisor.”  
 9 Exhibit “1”. The only witness from USAA is not a insurance policy underwriter.

10 The only insurance policy underwriters ever mentioned by USAA came after the discovery  
 11 cut-off date, giving Wallace no opportunity to depose them during the discovery period. (#18-4  
 12 Exhibit 4). The first witness regarding underwriting, Peter Morris (hereinafter “Morris”), was never  
 13 disclosed to Wallace until a month after the discovery period had ended, on the last day to file  
 14 dispositive motions. (*compare* #18 and #11). As an exhibit to USAA’s Motion for Summary  
 15 Judgment, USAA provided the Affidavit of Peter Morris, wherein Morris provides inadmissible  
 16 hearsay testimony of the opinions of Katy Luebke and Kim Wilhoite (hereinafter “Luebke” and  
 17 “Wilhoite”, respectively), two other underwriters not named as witnesses in the instant litigation.  
 18 (#18-4 Exhibit 4).

19 On or about October 11, 2011, the Court issued an order stating that “the expert report of  
 20 James L. Wadhams, Esq. (#14) is stricken, and [USAA] is not permitted to call him as a witness or  
 21 use his report in support of any motion or at trial” on the grounds that USAA’s expert witness  
 22 (hereinafter “Wadhams”) was not timely disclosed. (#27). Wadhams was disclosed on June 17,  
 23 2011. (#27). Morris, Luebke and Wilhoite were never properly disclosed, and were mentioned for  
 24 the first time to Wallace by USAA on or about August 19, 2011, almost two months after Wadhams  
 25 was improperly disclosed. (#18-4 Exhibit 4). When Wallace attempted to resolve the improper  
 26 disclosure of Wadhams with USAA without Court intervention, USAA’s counsel refused to  
 27 communicate with any substance to Wallace’s counsel, and the Court found that “[i]t was clear that  
 28 [Wallace] attempted to resolve [the] issue via telephone conversation, and that the party not acting

1 in 'good faith' was [USAA]." (#27). Now, USAA is again attempting to interject witnesses into this  
 2 case in such a way that is repugnant to the Federal Rules of Civil Procedure, particularly because  
 3 USAA is again attempting to interject a witness, three more of them, into the case in such a way that  
 4 Wallace is not able to depose them. (#18-4 Exhibit 4).

5 This Motion *in Limine* is hereby made to prevent USAA from calling Morris, Luebke,  
 6 Wilhoite, or any other insurance policy underwriters as witnesses at trial.

## 7 II.

### 8 GENERAL STATEMENT OF THE LAW.

#### 9 A. Local Rule Regarding Motions *In Limine*.

10 "Unless otherwise ordered by the court, motions *in limine* are due thirty (30) days prior to  
 11 trial. Oppositions shall be filed and served and the motion submitted for decision fifteen (15) days  
 12 thereafter. Replies will be allowed only with leave of the court." LR 16-3(b).

#### 13 B. Substantive Law Regarding Disclosures Required Pursuant to FRCP 26.

14 Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), "a party must, without awaiting a discovery  
 15 request, provide to the other parties the name and, if known, the address and telephone number of  
 16 each individual likely to have discoverable information – along with the subjects of that information  
 17 – that the disclosing party may use to support its claims or defenses, unless the use would be solely  
 18 for impeachment." Rule 26(a)(1)(E) requires that "[a] party must make its initial disclosures based  
 19 on the information then reasonable available to it." "Rule 26(e)(1)(A) requires disclosing parties to  
 20 supplement their prior disclosures 'in a timely manner' when the prior response is 'incomplete or  
 21 incorrect.' Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any  
 22 information required to be disclosed by Rule 26(a) that is not properly disclosed." Reynoso v.  
 23 Construction Protective Services, Inc., 2008 U.S. App. LEXIS 19681, 6 (9th Cir. 2008) (citation  
 24 omitted).

25 ...

26 ...

27 ...

28 ...

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1 III.

2 LEGAL ANALYSIS.

3 A. USAA Should Not Be Permitted to Call Morris, Luebke or Wilhoite at Trial.

4 USAA mentioned, but never disclosed pursuant to Rule 26, three insurance policy  
5 underwriters after the close of discovery. (*compare* Exhibits “1” through “3” & #18-4 Exhibit 4).  
6 Thus, not only has USAA failed to comply with the Scheduling Order and the Federal Rules of Civil  
7 Procedure once again, but USAA has again attempted to improperly interject witnesses into this case  
8 in such a way that Wallace is not afforded an opportunity to depose them. The Court did not allow  
9 this sort of trickery last time, and should not allow it this time. (#27). Therefore, Wallace prays that  
10 the Court will not permit USAA to call Morris, Luebke or Wilhoite as a witness or use their  
11 testimony in support of any motion or at trial.

12 B. USAA Should be Sanctioned Pursuant to Rule 37(c).

13 Pursuant to Rule 37(c)(1), in pertinent part, “[i]f a party fails to . . . identify a witness as  
14 required by Rule 26(a). . . , the party is not allowed to use that . . . witness to supply evidence on a  
15 motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” In  
16 addition, the Court “may order payment of the reasonable expenses, including attorney’s fees, caused  
17 by the failure.” Fed. R. Civ. P. 37(c)(1)(A). The Court may also “impose other sanctions, including  
18 any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).”

19 Here, Wallace is again forced to incur costs and fees due to USAA’s failures to comply with  
20 the Federal Rules of Civil Procedure. Wallace, was forced to file a protective order last time USAA  
21 deliberately ignored the Rules. (#27). Now, Wallace is forced to file this instant motion *in limine*  
22 to protect herself from additional discovery abuses on the part of USAA. Wallace should be  
23 compensated, and USAA should be sanctioned, for the unnecessary litigation that Wallace has been  
24 forced to engage in. Wallace, accordingly, prays that the Court will issue sanctions and/or award  
25 costs and fees in any manner that the Court deems just and proper under the Rules. Should the Court  
26 deem that attorney’s fees and costs are appropriate, Wallace hereby seeks leave of the Court to file  
27 a post-hearing motion demonstrating the attorney’s fees and costs that she has incurred on the part  
28 of USAA’s repetitive rule-breaking.

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C. Wallace Anticipates that USAA Will Proffer Some Sort of Excuse for its Repetitive Rule-Breaking; Thus, Wallace Hereby Seeks Leave of the Court to File a Reply to USAA's Opposition to this Motion.

With regard to motions *in limine*, "Replies will be allowed only with leave of the court." LR 16-3(b). A reply will not prejudice any party, particularly because this case is not yet situated on the eve of trial and the instant motion *in limine* is filed well in advance of the cut-off date for such motions. However, Wallace may be prejudiced if she is not afforded leave to file a reply, particularly because Wallace cannot anticipate at this time what excuse USAA will have this time for violating Rule 26, so she prays that the Court will grant her an opportunity to confront that excuse when it becomes known to her.

IV.

CONCLUSION.

The Court should grant the instant motion *in limine*, award Wallace attorney's fees and costs, sanction USAA for repetitive discovery abuses, and grant Wallace leave to file a reply to USAA's opposition to the instant motion.

DATED this 12<sup>th</sup> day of October, 2011.

JOHN PETER LEE, LTD.

BY: 

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JOHN C. COURTNEY, ESQ.  
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Attorneys for Plaintiff

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**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 12 day of October, 2011, a copy of the **MOTION IN LIMINE # 1** was served on the following parties via email and by mailing a copy thereof, first class mail, postage prepaid, addressed to:

Kathleen M. Maynard, Esq.  
Thorndal, Armstrong, Delk  
Balkenbush & Eisinger  
1100 East Bridger Avenue  
Las Vegas, Nevada 89101  
Email: [kmaynard@thorndal.com](mailto:kmaynard@thorndal.com)  
Attorney for Defendant



An employee of  
JOHN PETER LEE, LTD.

**JOHN PETER LEE, LTD.**

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**EXHIBIT “1”**



1 JAMES J. JACKSON, ESQ.  
Nevada Bar No. 3083  
2 KATHLEEN M. MAYNARD, ESQ.  
Nevada Bar No. 10675  
3 THORNDAL, ARMSTRONG, DELK  
BALKENBUSH & EISINGER  
4 1100 E. Bridger Avenue (89101)  
P.O. Drawer 2070  
5 Las Vegas, NV 89125-2070  
Phone: (702) 366-0622  
6 Fax: (702) 366-0327  
7 [jjackson@thorndal.com](mailto:jjackson@thorndal.com)  
[kmaynard@thorndal.com](mailto:kmaynard@thorndal.com)

8 Attorneys for the Defendant/Counterclaimant,  
9 **USAA LIFE INSURANCE COMPANY, INC.**

10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF NEVADA**

13 MARIELLEN M. WALLACE, an  
individual,

14 Plaintiff,

15 vs.

16 USAA LIFE GENERAL AGENCY,  
17 INC., a foreign corporation; DOES I  
18 through X and ROE CORPORATIONS  
I through X,

19 Defendants.

CASE NO.: 2:10-cv-01855-LRH-LRL

**DEFENDANT/COUNTERCLAIMANT, USAA LIFE  
INSURANCE COMPANY INC.'S REQUIRED  
INITIAL DISCLOSURES PURSUANT TO Fed.  
Rule Civ. P. 26(a)(1)**

20  
21 **AND ALL RELATED CLAIMS**  
22

23 **DEFENDANT/COUNTERCLAIMANT, USAA LIFE INSURANCE COMPANY INC.'S**  
24 **REQUIRED INITIAL DISCLOSURES PURSUANT TO Fed. Rule Civ. P. 26(a)(1)**

25 Defendant/Counterclaimant, USAA LIFE INSURANCE COMPANY (herein known as  
26 "USAA LIFE" or "Defendant") sets forth its Required Initial Disclosures in accordance with Fed.  
27 R. Civ. P. 26(a)(1)(i-iv) as follows:  
28

1           26(a)(1)(A)(i) The name and if known, the address and telephone number of each  
2 individual likely to have discoverable information that the disclosing party may use to  
3 support its claims or defenses, unless solely for impeachment, identifying the subjects  
4 of the information:

- 5           1. Mariellen M. Wallace  
6             c/o John C. Courtney, Esq.  
7             JOHN PETER LEE, LTD.  
8             830 Las Vegas Blvd. South  
9             Las Vegas, NV 89101

10           Ms. Wallace is the plaintiff and beneficiary.

- 11           2. Alice Gearhart  
12             Life/Annuity Claims and Benefits Advisor  
13             USAA Life Insurance Company Inc.  
14             c/o Kathleen M. Maynard, Esq.  
15             Law Offices of THORNDAL, ARMSTRONG, DELK,  
16             BALKENBUSH & EISINGER  
17             1100 East Bridger Ave.  
18             Las Vegas, NV 89101

19           Ms. Gearhart has knowledge of the insurance issues involved in this litigation.

- 20           3. Custodian of Records and/or Person Most Knowledgeable for  
21             Yolanda Flores, M.D.  
22             2316 Charleston, Suite 277  
23             Las Vegas, NV 89102

24           Regarding the medical records of James B. Wallace,

- 25           4. Custodian of Records and/or Person Most Knowledgeable for  
26             Jason Zommick, M.D., FACS  
27             Urology Specialists of Nevada  
28             56 N. Pecos Road  
              Henderson, NV 89074

              Regarding the medical records of James B. Wallace,

5. Custodian of Records and/or Person Most Knowledgeable for  
               Ramlinga Ratnasabapathy, M.D.  
               Cancer/Blood Specialists of Nevada  
               6190 Fort Apache  
               Las Vegas, NV 89148

              Regarding the medical records of James B. Wallace,

1 6. Custodian of Records and/or Person Most Knowledgeable for  
2 Examination Management Services, Inc.  
3 3075 E. Flamingo Road, Suite 102  
4 Las Vegas, NV 89121

5 Regarding the medical records of James B. Wallace,

6 7. Custodian of Records and/or Person Most Knowledgeable for  
7 Arizona Gastroenterology  
8 7566 N. La Cholla Blvd.  
9 Tucson, AZ 85741

10 Regarding the medical records of James B. Wallace,

11 8. Custodian of Records and/or Person Most Knowledgeable for  
12 Tucson Occupational Medicine  
13 888 Craycroft Road, Suite 150  
14 Tucson, AZ 85711

15 Regarding the medical records of James B. Wallace,

16 9. Custodian of Records and/or Person Most Knowledgeable for  
17 Southwest Medical Associates  
18 2300 W. Charleston Blvd., Suite 162  
19 Las Vegas, NV 89114

20 Regarding the medical records of James B. Wallace,

21 10. Custodian of Records and/or Person Most Knowledgeable for  
22 Cho Young, M.D.  
23 Southwest Medical Associates  
24 2300 W. Charleston Blvd., Suite 162  
25 Las Vegas, NV 89114

26 Regarding the medical records of James B. Wallace,

27 11. Custodian of Records and/or Person Most Knowledgeable for  
28 Southwest Medical Associates  
2825 Siena Heights  
Las Vegas, NV 89052

Regarding the medical records of James B. Wallace,

12. Custodian of Records and/or Person Most Knowledgeable for  
Antonio T. Alamo, M.D.  
56 N. Pecos Road, Suite A  
Henderson, NV 89014

Regarding the medical records of James B. Wallace,

1 13. Custodian of Records and/or Person Most Knowledgeable for  
2 Devanshu Thakore, M.D.  
3 2550 W. Charleston Blvd.  
4 Las Vegas, NV 89102

5 Regarding the medical records of James B. Wallace,

6 14. Custodian of Records and/or Person Most Knowledgeable for  
7 Quest Diagnostics  
8 4320 Burnham Avenue, Suite 144  
9 Las Vegas, NV 89119

10 Regarding the medical records of James B. Wallace,

11 15. Custodian of Records and/or Person Most Knowledgeable for  
12 Richard DeCarlo, PA-C  
13 Southwest Medical Associates  
14 2300 W. Charleston Blvd., Suite 162  
15 Las Vegas, NV 89114

16 Regarding the medical records of James B. Wallace,

17 16. Custodian of Records and/or Person Most Knowledgeable for  
18 Radiation Oncology Centers of Las Vegas  
19 624 S. Tonopah Drive  
20 Las Vegas, NV 89106

21 Regarding the medical records of James B. Wallace,

22 17. Custodian of Records and/or Person Most Knowledgeable for  
23 Nevada Orthopedic & Spine Center  
24 P.O. Box 36550  
25 Las Vegas, NV 89133

26 Regarding the medical records of James B. Wallace,

27 18. Custodian of Records and/or Person Most Knowledgeable for  
28 Associated Pathologists, Chartered  
5400 S. Rainbow Blvd.  
Las Vegas, NV 89118

Regarding the medical records of James B. Wallace,

19. Custodian of Records and/or Person Most Knowledgeable for  
St. Rose Dominican Hospital - Siena Campus  
3001 St. Rose Parkway  
Henderson, NV 89052

Regarding the medical records of James B. Wallace,

20. Custodian of Records and/or Person Most Knowledgeable for  
Summerlin Hospital Medical Center  
657 Town Center Drive  
Las Vegas, NV 89144

Regarding the medical records of James B. Wallace,

21. Custodian of Records and/or Person Most Knowledgeable for  
Steinberg Diagnostic Medical Imaging Centers  
2850 Siena Heights  
Henderson, NV 89053

Regarding the medical records of James B. Wallace.

**26(a)(1)(A)(ii) A copy of, or a description by category and location of, all documents, electronically stored information, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment:**

1. See attached CD with the following:

a) Claim file documents including correspondence, life insurance application and policy and medical records for James B. Wallace, bates nos. USAA-WALL 1-434.

The following documents are identified but not produced:

**PRIVILEGE LOG**

Bates Nos.	Description
USAA-WALL 435-444	Correspondence between USAA Life Insurance Company, Inc. and counsel

**26(a)(1)(A)(iii) A copy of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:**

1. Not applicable

**26(a)(1)(A)(iv) For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to**


1 satisfy part or all of a judgment which may be entered in the action or to indemnify or  
2 reimburse for payments made to satisfy the judgment.

3 2. Not applicable

4 Defendant reserves the right to supplement its required initial disclosures pursuant to  
5 Fed. R. Civ. P. 26(a)(1) in accordance with Fed. R. Civ. P. 26(e).

6 DATED this 7<sup>th</sup> day of January, 2011.

7  
8 THORNDAL ARMSTRONG DELK  
9 BALKENBUSH & EISINGER

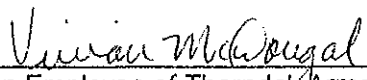
10   
11 JAMES J. JACKSON, ESQ.  
12 KATHLEEN M. MAYNARD, ESQ.  
13 1100 E. Bridger Avenue  
14 Las Vegas, Nevada 89101  
15 Attorneys for Defendant/Counterclaimant  
16 USAA LIFE INSURANCE COMPANY, INC.

17 **CERTIFICATE OF SERVICE BY HAND DELIVERY**

18 I hereby certify that on this 7<sup>th</sup> day of January, 2011, service of the  
19 foregoing **DEFENDANT/COUNTERCLAIMANT, USAA LIFE INSURANCE COMPANY INC.'S**  
20 **REQUIRED INITIAL DISCLOSURES PURSUANT TO Fed. Rule Civ. P. 26(a)(1)** was made by  
21 hand delivering a true and correct copy to the address below:

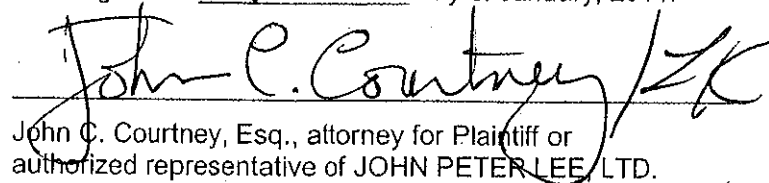
22 John C. Courtney, Esq.  
23 JOHN PETER LEE, LTD.  
24 830 Las Vegas Blvd., South  
25 Las Vegas, NV 89101  
26 Ph (702) 382-4044  
27 Fax (702) 383-9950

28 Attorneys for Plaintiff, Mariellen M. Wallace

29   
30 An Employee of Thorndal, Armstrong, Delk  
31 Balkenbush & Eisinger

RECEIPT OF COPY

RECEIPT of DEFENDANT/COUNTERCLAIMANT, USAA LIFE INSURANCE  
COMPANY INC.'S REQUIRED INITIAL DISCLOSURES PURSUANT TO Fed. Rule Civ. P.  
26(a)(1) is hereby acknowledged this 7<sup>th</sup> day of January, 2011.

  
John C. Courtney, Esq., attorney for Plaintiff or  
authorized representative of JOHN PETER LEE, LTD.

**EXHIBIT “2”**



23914

JAMES J. JACKSON, ESQ.

Nevada Bar No. 3083

KATHLEEN M. MAYNARD, ESQ.

Nevada Bar No. 10675

THORNDAL, ARMSTRONG, DELK

BALKENBUSH & EISINGER

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[jjackson@thorndal.com](mailto:jjackson@thorndal.com)

[kmaynard@thorndal.com](mailto:kmaynard@thorndal.com)

Attorneys for the Defendant/Counterclaimant,

**USAA LIFE INSURANCE COMPANY, INC.**

**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEVADA**

MARIELLEN M. WALLACE, an  
individual,

Plaintiff,

vs.

USAA LIFE GENERAL AGENCY,  
INC., a foreign corporation; DOES I  
through X and ROE CORPORATIONS  
I through X,

Defendants.

CASE NO.: 2:10-cv-01855-LRH-LRL

**DEFENDANT/COUNTERCLAIMANT, USAA LIFE  
INSURANCE COMPANY INC.'S FIRST  
SUPPLEMENT TO REQUIRED INITIAL  
DISCLOSURES PURSUANT TO Fed. Rule Civ.  
P. 26(a)(1)**

AND ALL RELATED CLAIMS

Defendant/Counterclaimant, USAA LIFE INSURANCE COMPANY (herein known as "USAA LIFE" or "Defendant") sets forth its First Supplement to Required Initial Disclosures in accordance with Fed. R. Civ. P. 26(a)(1)(i-iv) as follows:

**26(a)(1)(A)(i) The name and if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to**

1 support its claims or defenses, unless solely for impeachment, identifying the subjects  
2 of the information:

3 22. Custodian of Records and/or Person Most Knowledgeable for Genoptix Medical  
4 Laboratory, 2110 Rutherford Road, Carlsbad, CA 92008, pertaining to the medical records of  
5 James B. Wallace.

6 23. Custodian of Records and/or Person Most Knowledgeable for St. Rose Dominican  
7 Hospital – San Martin Campus, 8280 W. Warm Springs Rd., Las Vegas, NV 89113, pertaining  
8 to the medical records of James B. Wallace.

9 24. Custodian of Records and/or Person Most Knowledgeable for Spring Valley Hospital,  
10 5400 S. Rainbow Blvd., Las Vegas, NV 89118, pertaining to the medical records of James B.  
11 Wallace.

12 25. Custodian of Records and/or Person Most Knowledgeable for CVS Pharmacy, One  
13 CVS Drive, Woonsocket, RI 02895, pertaining to the pharmaceutical records of James B.  
14 Wallace.

15 26. Custodian of Records and/or Person Most Knowledgeable for Walgreen Company,  
16 1901 E. Vorhees St., PO Box 4039, MS #735, Danville, IL 61834, pertaining to the  
17 pharmaceutical records of James B. Wallace.

18 27. Custodian of Records and/or Person Most Knowledgeable for Harmon Medical and  
19 Rehabilitation Hospital, 2170 E. Harmon Ave., Las Vegas, NV 89119, pertaining to the medical  
20 records of James B. Wallace.

21 28. Custodian of Records and/or Person Most Knowledgeable for National Personnel  
22 Records Center, Civilian Personnel Records, 111 Winnebago St., St. Louis, MO 63118,  
23 pertaining to the life insurance policy records of James B. Wallace.

24 29. Custodian of Records and/or Person Most Knowledgeable for Benefits Office for City  
25 of Tucson, PO Box 27210, Tucson, AZ 85726, pertaining to the life insurance policy records of  
26 James B. Wallace.

1  
2       26(a)(1)(A)(ii) A copy of, or a description by category and location of, all  
3 documents, electronically stored information, and tangible things that are in the  
4 possession, custody, or control of the party and that the disclosing party may use to  
5 support its claims or defenses, unless solely for impeachment:

6       1. See attached CD with the following:

7       a) Copy of medical records from Cancer and Blood Specialists of Nevada regarding  
8 James B. Wallace, bates nos. USAA-WALL 445-539.

9       b) Copy of medical records from Urology Specialists of Nevada regarding James B.  
10 Wallace, bates nos. USAA-WALL 540-573.

11       c) Copy of medical records from Alamo Medical Clinic regarding James B. Wallace,  
12 bates nos. USAA-WALL 574-588.

13       d) Copy of medical records from Genoptix Medical Laboratory regarding James B.  
14 Wallace, bates nos. USAA-WALL 589-612.

15       e) Copy of medical records from Spring Valley Hospital regarding James B. Wallace,  
16 bates nos. USAA-WALL 613-662.

17       f) Copy of medical records from St. Rose Dominican Hospital – San Martin Campus  
18 regarding James B. Wallace, bates nos. USAA-WALL 663-1697.

19       g) Copy of pharmaceutical records from CVS Pharmacy regarding James B. Wallace,  
20 bates nos. USAA-WALL 1698-1700.

21       h) Copy of life insurance policy records from City of Tucson Benefits Office regarding  
22 James B. Wallace, bates nos. USAA-WALL 1701-1713.

23       i) Copy of medical records from Summerlin Hospital Medical Center regarding James  
24 B. Wallace, bates nos. USAA-WALL 1714-1888.

25       j) Copy of medical records from Southwest Medical Associates regarding James B.  
26 Wallace, bates nos. USAA-WALL 1889-2238.  
27  
28

1 k) Copy of radiology records from Steinberg Diagnostic Imaging regarding James B.

2 Wallace, bates nos. USAA-WALL 2239-2268.

3 l) Copy of pharmaceutical records from Walgreen Company regarding James B.

4 Wallace, bates nos. USAA-WALL 2269-2281.

5 m) Copy of medical records from Quest Diagnostics regarding James B. Wallace,  
6 bates nos. USAA-WALL 2282-2558.

7 n) Copy of medical records from Arizona Gastroenterology regarding James B.  
8 Wallace, bates nos. USAA-WALL 2559-2562.

9 o) Copy of medical records for Nevada Orthopedic & Spine Center regarding James B.  
10 Wallace, bates nos. USAA-WALL 2563-2594.

11 p) Copy of life insurance policy records from National Personnel Center regarding  
12 James B. Wallace, bates nos. USAA-WALL 2595-2614.

13 q) Copy of medical records from Harmon Medical and Rehabilitation Hospital  
14 regarding James B. Wallace, bates nos. USAA-WALL 2615-2899.

15 r) Copy of investigation documents from Examination Management Services including  
16 CD with recorded telephone interview with James B. Wallace, bates nos. USAA-WALL 2900-  
17 2927.  
18

19  
20 **26(a)(1)(A)(iii) A copy of any category of damages claimed by the disclosing party,**  
21 **making available for inspection and copying as under Rule 34 the documents or other**  
22 **evidentiary material not privileged or protected from disclosure, on which such**  
23 **computation is based, including materials bearing on the nature and extent of injuries**  
24 **suffered:**

25 1. Not applicable

26 **26(a)(1)(A)(iv) For inspection and copying as under Rule 34 any insurance**  
27 **agreement under which any person carrying on an insurance business may be liable to**  
28

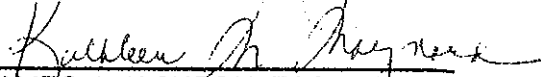
1 satisfy part or all of a judgment which may be entered in the action or to indemnify or  
2 reimburse for payments made to satisfy the judgment.

3 2. Not applicable

4 Defendant reserves the right to supplement its required initial disclosures pursuant to  
5 Fed. R. Civ. P. 26(a)(1) in accordance with Fed. R. Civ. P. 26(e).

6 DATED this 9<sup>th</sup> day of June, 2011.

7  
8 THORNDAL ARMSTRONG DELK  
BALKENBUSH & EISINGER

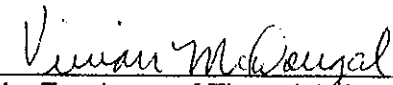
9   
10 JAMES J. JACKSON, ESQ.  
KATHLEEN M. MAYNARD, ESQ.  
11 1100 E. Bridger Avenue  
12 Las Vegas, Nevada 89101  
13 Attorneys for Defendant/Counterclaimant  
USAA LIFE INSURANCE COMPANY, INC.

14  
15 **CERTIFICATE OF SERVICE BY HAND DELIVERY**

16 I hereby certify that on this 9<sup>th</sup> day of June, 2011, service of the foregoing  
17 **DEFENDANT/COUNTERCLAIMANT, USAA LIFE INSURANCE COMPANY INC.'S FIRST**  
18 **SUPPLEMENT TO REQUIRED INITIAL DISCLOSURES PURSUANT TO Fed. Rule Civ. P.**  
19 **26(a)(1)** was made by hand delivering a true and correct copy to the address below:

20 John C. Courtney, Esq.  
21 JOHN PETER LEE, LTD.  
22 830 Las Vegas Blvd., South  
23 Las Vegas, NV 89101  
Ph (702) 382-4044  
Fax (702) 383-9950

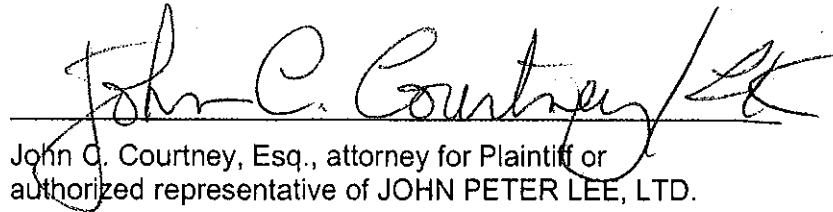
24 Attorneys for Plaintiff, Mariellen M. Wallace

25  
26   
27 An Employee of Thorndal Armstrong, Delk  
28 Balkenbush & Eisinger

RECEIPT OF COPY

RECEIPT of DEFENDANT/COUNTERCLAIMANT, USAA LIFE INSURANCE  
COMPANY INC.'S FIRST SUPPLEMENT TO REQUIRED INITIAL DISCLOSURES

PURSUANT TO Fed. Rule Civ. P. 26(a)(1) is hereby acknowledged this 9th day  
of June, 2011.

  
John C. Courtney, Esq., attorney for Plaintiff or  
authorized representative of JOHN PETER LEE, LTD.

**EXHIBIT “3”**

1 JAMES J. JACKSON, ESQ.  
Nevada Bar No. 3083  
2 KATHLEEN M. MAYNARD, ESQ.  
Nevada Bar No. 10675  
3 THORNDAL, ARMSTRONG, DELK  
BALKENBUSH & EISINGER  
4 1100 E. Bridger Avenue (89101)  
P.O. Drawer 2070  
5 Las Vegas, NV 89125-2070  
Phone: (702) 366-0622  
6 Fax: (702) 366-0327  
7 [jjackson@thorndal.com](mailto:jjackson@thorndal.com)  
[kmaynard@thorndal.com](mailto:kmaynard@thorndal.com)

8 Attorneys for the Defendant/Counterclaimant,  
9 **USAA LIFE INSURANCE COMPANY, INC.**

10 **UNITED STATES DISTRICT COURT**  
11  
12 **FOR THE DISTRICT OF NEVADA**

13 MARIELLEN M. WALLACE, an  
individual,

14  
15 Plaintiff,

16 vs.

17 USAA LIFE GENERAL AGENCY,  
INC., a foreign corporation; DOES I  
18 through X and ROE CORPORATIONS  
I through X,

19  
20 Defendants.

CASE NO.: 2:10-cv-01855-LRH-LRL

**DEFENDANT/COUNTERCLAIMANT, USAA LIFE  
INSURANCE COMPANY INC.'S THIRD  
SUPPLEMENT TO REQUIRED INITIAL  
DISCLOSURES PURSUANT TO Fed. Rule Civ.  
P. 26(a)(1)**

21 **AND ALL RELATED CLAIMS**  
22

23  
24 Defendant/Counterclaimant, USAA LIFE INSURANCE COMPANY (herein known as  
25 "USAA LIFE" or "Defendant") sets forth its Third Supplement to Required Initial Disclosures in  
26 accordance with Fed. R. Civ. P. 26(a)(1)(i-iv) as follows:

27 **26(a)(1)(A)(i) The name and if known, the address and telephone number of each**  
28 **individual likely to have discoverable information that the disclosing party may use to**



1 support its claims or defenses, unless solely for impeachment, identifying the subjects  
2 of the information:

3 None

4  
5 26(a)(1)(A)(ii) A copy of, or a description by category and location of, all  
6 documents, electronically stored information, and tangible things that are in the  
7 possession, custody, or control of the party and that the disclosing party may use to  
8 support its claims or defenses, unless solely for impeachment:

9 1. See Exhibit T:

10  
11 t) See the attached documents bates nos. USAA-WALL 8739-8748.

12 26(a)(1)(A)(iii) A copy of any category of damages claimed by the disclosing party,  
13 making available for inspection and copying as under Rule 34 the documents or other  
14 evidentiary material not privileged or protected from disclosure, on which such  
15 computation is based, including materials bearing on the nature and extent of injuries  
16 suffered:

17 1. Not applicable

18 26(a)(1)(A)(iv) For inspection and copying as under Rule 34 any insurance  
19 agreement under which any person carrying on an insurance business may be liable to  
20 satisfy part or all of a judgment which may be entered in the action or to indemnify or  
21 reimburse for payments made to satisfy the judgment.

22 2. Not applicable

23 ///

24 ///

25 ///

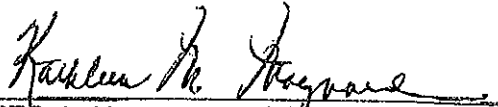
26 ///

27 ///

1 Defendant reserves the right to supplement its required initial disclosures pursuant to  
2 Fed. R. Civ. P. 26(a)(1) in accordance with Fed. R. Civ. P. 26(e).

3  
4 DATED this 19<sup>th</sup> day of July, 2011.

5  
6 THORNDAL ARMSTRONG DELK  
7 BALKENBUSH & EISINGER

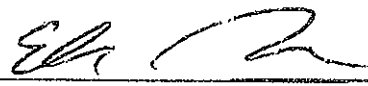
8   
9 JAMES J. JACKSON, ESQ.  
10 KATHLEEN M. MAYNARD, ESQ.  
11 1100 E. Bridger Avenue  
12 Las Vegas, Nevada 89101  
13 Attorneys for Defendant/Counterclaimant  
14 USAA LIFE INSURANCE COMPANY, INC.

15  
16 **CERTIFICATE OF SERVICE BY FAX AND MAIL**

17 I hereby certify that on this 19th day of July, 2011, service of the foregoing  
18 DEFENDANT/COUNTERCLAIMANT, USAA LIFE INSURANCE COMPANY INC.'S THIRD  
19 SUPPLEMENT TO REQUIRED INITIAL DISCLOSURES PURSUANT TO Fed. Rule Civ. P.  
20 26(a)(1) was made by fax and by mailing a true and correct copy to the address below:

21 John C. Courtney, Esq.  
22 JOHN PETER LEE, LTD.  
23 830 Las Vegas Blvd., South  
24 Las Vegas, NV 89101  
25 Ph (702) 382-4044  
26 Fax (702) 383-9950

27 Attorneys for Plaintiff, Mariellen M. Wallace

28   
An Employee of Thorndal, Armstrong, Delk  
Balkenbush & Eisinger

**EXHIBIT T**

**Gearhart, Alice**  
**From:** Gearhart, Alice  
**Sent:** Friday, February 13, 2009 1:46 PM  
**To:** Morris, Pete  
**Cc:** Murray, Monica  
**Subject:** Confidential: Wallace

**CONFIDENTIAL - COMMUNICATION**

This email and any attachments are confidential and may be the subject of legal professional privilege. If you are not the intended recipient, any use, disclosure or copying of this document is unauthorized. If you have received this document in error, please immediately notify the sender by calling (210) 456-9058 and delete this email from your computer. Thank you.

**RE:**  
USAA Member: James Wallace  
USAA Number: 146 18 54  
Contract Number: A337518511

**Policy Information:**

Policy Type: 10 Year Level Term

Benefit Amount: \$500,000

Application Date: 8-28-2007

Effective Date: 09-25-2007

Contract State: NV

Residence State: NV

NAIC Model Reg: not a replacement

Beneficiary: Mariellen Wallace

Date of Birth: 08-28-1953

Date of Death: 09-13-2008

**Claim Summary:** Contestable death claim on a 55 year male. Cause of death testicular lymphoma.

**Medical Summary:** Disclosed medical history: asthma as a child in 1953 last episode 1967, diagnostic tests disclosed: colonoscopy 11-2004, x-ray of right shoulder 10-2004, urine test 9-2006. Consulted provider not previously disclosed: orchitis (no date listed).

Undisclosed medical history: 6-16-2007 visit to Dr Flores for right testicle pain and swelling, Ultrasound 6-20-07 enlarged right testicle, possibilities included orchitis, torsion which spontaneously resolved or underlying neoplasm are not excluded. 7-3-2007 Ultrasound #2 same findings as above, possible orchitis, neoplastic process could not be ruled out. Referred to Urologist Dr Zommick. 8-23-2007 Ultrasound #3 still could not rule out neoplasm. 8-27-2007 Dr Zommick recommended orchiectomy of the right testicle. 9-24-2007 preop blood work, 9-26-2007 preop clearance with Dr Flores.

**Current Investigation:** Waiting on records from Alamo Medical Clinic

**Requests/Recommendation:** Please review the non-disclosed medical history and testing that the insured was going thru during the application process. The medical records are all in portal. Would this have altered the issue of this contract? Please let me know if you need any additional information.

**Gearhart, Alice**

**From:** Morris, Pete  
**Sent:** Tuesday, February 17, 2009 1:09 PM  
**To:** Gearhart, Alice  
**Co:** Murray, Monica; Egan, Mike; Belko, Michael; Morris, Pete  
**Subject:** RE: Confidential: Wallace, # 1461854

Hi Alice,

I have completed my review of this case.

During the interview, the member did not admit to receiving regular medical consultation but in fact he had the following consultations during the entire underwriting process:

- 6/16/07 consult for swollen testicle treated with antibiotics. He was referred to Dr. Bul for testicular ultrasound which was done and found finding consistent with resolved partial torsion or an orchitis.
- On 6/20/07 radiologist interpretation of ultrasound indicated differential possibilities include orchitis; torsion which spontaneously resolved or underlying neoplasm are not excluded.
- 7/03/07 he saw Dr. Yolanda Flores --notes indicate right testicular enlargement. Recheck ultrasound and follow up with urology next week.
- 7/09/07 Urology Specialist Dr. Zommick - notes indicate follow up for orchitis, tumor marker tests in normal range. Letter to Dr. Flores indicates Dr. Zommick felt this was orchitis and not testicular cancer.
- 8/21/08 repeat ultrasound comparison study of 07/03/07 and 06/16/07 finding indicated may represent persistent Orchitis - suggest follow up to exclude possible neoplastic process.
- 8/27/07 - persistent R orchitis - plan R orchiectomy
- 07/09/07
- 09/24/07 pre-op labs completed.
- 09/26/07 preop clearance with Dr Flores.

When completing the Teleinterview the member should have answered "Yes" to the following questions but instead answered "No".

- Has any Insured ever consulted with a health care provider for disorder of the prostate or reproductive system?
- Is any Insured currently taking prescription medication not previously disclosed (possibly was still on antibiotics).

The member gave an incomplete answer when asked if any Insured within the past five years had an electrocardiogram, X-ray or any other diagnostic test or procedure that was not previously disclosed as he did not admit to the testicular ultrasound completed on 6/20/07.

Our application also requires proposed insured's to notify us if the health and insurability of each person is no longer as stated in this application. When he was told he would have to have an orchiectomy he should have notified us.

The member, when answering the question about consulting a health care provider for any reason not previously disclosed told us that he had orchitis, but no additional details were captured. Since he also indicated that he was not currently receiving any regular consultation and did not admit to recent ultrasounds etc., the Underwriter most likely felt that this was distant history and did not pursue additional information to determine when this occurred etc.

Had this member completely and honestly advised of the recent medical consultations and ultrasounds for or ongoing likely orchitis we would not have issued this policy. Our underwriting guidelines call for postponing an application if orchitis is present.

I am in the process of obtaining the recorded Teleinterview to ensure all information was captured correctly – I will let you know once that has been received and the results.

Thanks and please let me know if you have questions, comments or concerns.

Pete Morris, FALU  
Principal Underwriter  
USAA Life Insurance Company  
1-800-235-8741 ext. - 69438

---

From: Gearhart, Alice  
Sent: Friday, February 13, 2009 1:46 PM  
To: Morris, Pete  
Cc: Murray, Monica  
Subject: Confidential: Wallace

**CONFIDENTIAL – COMMUNICATION**

This email and any attachments are confidential and may be the subject of legal professional privilege. If you are not the intended recipient, any use, disclosure or copying of this document is unauthorized. If you have received this document in error, please immediately notify the sender by calling (210) 456-0058 and delete this email from your computer. Thank you.

RE:  
USAA Member: James Wallace  
USAA Number: 146 18 54  
Contract Number: A337518511

Policy Information:

Policy Type: 10 Year Level Term  
Benefit Amount: \$500,000  
Application Date: 8-28-2007  
Effective Date: 08-25-2007

Beneficiary: Mariellen Wallace  
Date of Birth: 06-28-1963  
Date of Death: 09-13-2008

Contract State: NV  
Residence State: NV  
NAIC Model Reg: not a replacement

Claim Summary: Contestable death claim on a 65 year male. Cause of death testicular lymphoma.

Medical Summary: Disclosed medical history: asthma as a child in 1953 last episode 1987, diagnostic tests disclosed: colonoscopy 11-2004, x-ray of right shoulder 10-2004, urine test 9-2006. Consulted provider not previously disclosed: orchitis (no date listed).

Undisclosed medical history: 6-18-2007 visit to Dr Flores for right testicle pain and swelling, Ultrasound 6-20-07 enlarged right testicle, possibilities included orchitis, torsion which spontaneously resolved or underlying neoplasm are not excluded. 7-3-2007 Ultrasound #2 same findings as above, possible orchitis, neoplastic process could not be ruled out. Referred to Urologist Dr Zommick. 8-23-2007 Ultrasound #3 still could not rule out neoplasm. 8-27-2007 Dr Zommick recommended orchiectomy of the right testicle. 9-24-2007 preop blood work, 9-26-2007 preop clearance with Dr Flores.

Current Investigation: Waiting on records from Alamo Medical Clinic

Requests/Recommendation: Please review the non-disclosed medical history and testing that the insured was going thru during the application process. The medical records are all in portal. Would this have altered the issue of this contract? Please let me know if you need any additional information.

*Alice Gearhart*  
USAA Life Insurance and Investment Services  
X69056

USAA CONFIDENTIAL AND PROPRIETARY INFORMATION

**Gearhart, Alice**

**From:** Morris, Pete  
**Sent:** Thursday, February 19, 2009 4:08 PM  
**To:** Gearhart, Alice  
**Cc:** Murray, Monica; Egan, Mike; Belko, Michael; Morris, Pete  
**Subject:** RE: Confidential: Wallace, # 1461854

**Attachments:** 08-29-07 03-49-10p USAA91129 James Wallace mbr# 1461854.wav

Hi Alice,

I have now listened to the recorded teleinterview and would like to submit the following -- please destroy the previous email.

During the interview, after initially answering "No" to the question asking if any insured consulted a health care provider for any reason not previously disclosed he did later disclose that two weeks prior he had gone to "Urgent Care" for an inflamed testicle -- "orchitis". He also disclosed that he had another test that was previously not disclosed and told us about a urinalysis he had for employment purposes in 09 of 2006. He did not mention the urinalysis he had on 6/16/07 or the ultrasound done that same day (just days prior to applying for life insurance).

When completing the Teleinterview the member should have answered "Yes" to the following questions but instead answered "No".

- Has any Insured ever consulted with a health care provider for disorder of the prostate or reproductive system?
- Is any Insured currently taking prescription medication not previously disclosed (he started Cipro on 6/16/07 1 every 12 hours, quantity 28 which would mean he had a 14 day course of antibiotics and was still taking when completing the Teleinterview. The same is true for the Naproxen.

The member should have admitted to the ultrasound when asked if any insured within the past 5 years had an electrocardiogram, X-ray, or any other diagnostic test or procedure that was not previously disclosed. He remembered a distant X-ray and a distant urinalysis, but not something done just days earlier.

Our application requires proposed insured's/applicants to notify us if the "health and insurability of each person is no longer as stated in this application". He should have told us when he was told of the plan to do the orchiectomy and also of the following on going follow up consults and tests:

- 7/03/07 he saw Dr. Yolanda Flores --notes indicate right testicular enlargement. Recheck ultrasound and follow up with urology next week.
- 7/09/07 Urology Specialist Dr. Zommick -- notes indicate follow up for orchitis, tumor marker tests in normal range. Letter to Dr. Flores indicates Dr. Zommick felt this was orchitis and not testicular cancer.
- 8/21/08 repeat ultrasound comparison study of 07/03/07 and 08/16/07 finding indicated may represent persistent Orchitis -- suggest follow up to exclude possible neoplastic process.



- 8/27/07 -- persistent R orchitis -- plan R orchiectomy
- 09/24/07 pre-op labs completed.
- 09/26/07 preop clearance with Dr Flores.

Although the member told us of his "orchitis" two weeks prior to doing the interview, he did not admit to any tests or treatment so the Underwriter could have assumed the condition had resolved and therefore did not pursue any additional information or medical records. Had the member notified us of the ongoing consultations and ultrasounds/tumor marker tests etc. and finally the plan to remove his right testicle, we would not have issued the policy. Our underwriting guidelines call for postponing an application if orchitis is present.

Thanks and please let me know if you have questions, comments or concerns. We should consider holding a meeting with legal to discuss this case.



06-29-07  
49-10p USAA91125

Pete Morris, FALU  
Principal Underwriter  
USAA Life Insurance Company  
1-800-235-8741 ext. - 69438

---

**From:** Gearhart, Alice  
**Sent:** Friday, February 13, 2009 1:46 PM  
**To:** Morris, Pete  
**Cc:** Murray, Monica  
**Subject:** Confidential: Wallace

**CONFIDENTIAL - COMMUNICATION**

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**RE:**  
USAA Member: James Wallace  
USAA Number: 146 18 54  
Contract Number: A337518511

**Policy Information:**

**Policy Type:** 10 Year Level Term  
**Benefit Amount:** \$500,000  
**Application Date:** 6-26-2007  
**Effective Date:** 09-25-2007

**Beneficiary:** Mariellen Wallace  
**Date of Birth:** 08-28-1953  
**Date of Death:** 09-13-2008

Contract State: NV  
Residence State: NV  
NAIC Model Reg: not a replacement

Claim Summary: Contestable death claim on a 55 year male. Cause of death testicular lymphoma.

Medical Summary: Disclosed medical history: asthma as a child in 1953 last episode 1987, diagnostic tests disclosed: colonoscopy 11-2004, x-ray of right shoulder 10-2004, urine test 9-2006. Consulted provider not previously disclosed: orchitis (no date listed).

Undisclosed medical history: 6-18-2007 visit to Dr Flores for right testicle pain and swelling, Ultrasound 6-20-07 enlarged right testicle, possibilities included orchitis, torsion which spontaneously resolved or underlying neoplasm are not excluded. 7-3-2007 Ultrasound #2 same findings as above, possible orchitis, neoplastic process could not be ruled out. Referred to Urologist Dr Zommick. 8-23-2007 Ultrasound #3 still could not rule out neoplasm. 8-27-2007 Dr Zommick recommended orchiectomy of the right testicle. 9-24-2007 preop blood work, 9-26-2007 preop clearance with Dr Flores.

Current Investigation: Waiting on records from Alamo Medical Clinic

Requests/Recommendation: Please review the non-disclosed medical history and testing that the insured was going thru during the application process. The medical records are all in portal. Would this have altered the issue of this contract? Please let me know if you need any additional information.

*Alice Gearhart*  
USAA Life Insurance and Investment Services  
X69056

USAA CONFIDENTIAL AND PROPRIETARY INFORMATION

*Alice Gearhart*

*USAA Life Insurance and Investment Services*

*X69056*

USAA CONFIDENTIAL AND PROPRIETARY INFORMATION

**Gearhart, Alice**

**From:** Decker, Lisa  
**Sent:** Friday, September 19, 2008 11:08 AM  
**To:** Gearhart, Alice  
**Subject:** RE: Confidential: New Business Control

Type	Create Date	Created By	Description
Underwriting	8/17/2007 8:54:56 AM	Kim Vitholla	APS-Dr. Alamo: check up 8-07 only 8-07 Lab: pt, chol 222M, glucose 87, no A1C EKG: nar. Last colonoscopy--3 yrs ago: nl per pt. h/o exercise induced asthma--stable, followed for retinal hemorrhage. IGT per ins lab--glucose: nl--A1C 6.2--1 cardio risk factor (high chol)--std. PRF-----no pt due to aviation and elevated A1C 6.2--IGT
Underwriting	8/13/2007 3:42:27 PM	Loligh Ann Sem	aps here, sending to mass
Underwriting	7/23/2007 2:35:28 PM	Katy Luebke	mib nap exam - 6/07 routine ps / nl blood - a1c 6.2 - prf ecg wnl evie - pleasure flying...cesena. 400 total civ hrs-prf labs: IGT, prf aps dr tony eleno

**From:** Gearhart, Alice  
**Sent:** Friday, September 19, 2008 10:58 AM  
**To:** Decker, Lisa  
**Subject:** Confidential: New Business Control

Hi Lisa,

I need the new business control sheet for 1461854 James Wallace for contract A337518511, we have received notice of his death.

Thanks!

Alice Gearhart  
USAA Life Insurance and Investment Services  
X69056

USAA CONFIDENTIAL AND PROPRIETARY INFORMATION

Decision History - Microsoft Internet Explorer by USAA IE 6

Edit View Favorites



Back

Search



Favorites

Links

http://emp.usaa.com/newweb/en/Applications/requirements/DecisionHistory.jsp?revId=1&amp;ClientID=459702&amp;Name=JAMES%20WALLACE&amp;Relation=Primary&amp;ssOfus=2



## Decision History

Home Loan

Browse

View the history of decision(s) on contract A337518511-001.

Return to Underwriting Summary.

Earliest Rate Review Date		Review Statement of Health Required	
---------------------------	--	-------------------------------------	--

Decision Date: 9/17/2007

Decision Type: Underwriter Override

Decision	Approved	Reason	APS - ATTENDING PHYSICIAN'S STATEMENT
Comments:	PRF - no pol due to revision and elevated A1C on insurance blood profile.	Updated By:	Ron White

Cvg	Desc	Cvg Amt	Grp	Status	Risk Class	Table Rate	Exclusion Type	Cvg Amt Excluded	Cvg Amt Flat Extra Rate	Temp Flat Extra Rate/Year (\$)	Temp Flat Extra Rate Duration (Yrs)	Perm Flat Extra Rate/Year (\$)	DSO Approved
RENEWABLE LEVEL TERM 5		\$500,000		PENDING	Preferred-PRF			50		0.00		0.00	
WAIVER ON LEVEL TERM 5		\$500,000		PENDING	Preferred-PRF			50		0.00		0.00	

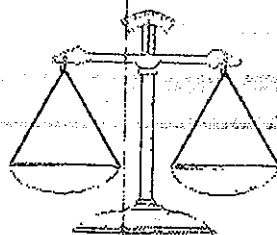
Decision Date: 9/5/2007

Decision Type: Underwriter Override

Decision	Incomplete	Reason	APS - ATTENDING PHYSICIAN'S STATEMENT
Comments:		Updated By:	Christopher Mallock

start





RECEIVED  
JUL 19 2011  
JOHN PETER LEE

THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER  
1100 East Bridger  
Las Vegas, NV 89101  
(702) 366-0622  
FAX No. (702) 366-0327

FAX TRANSMITTAL COVER SHEET

July 19, 2011

TO: John Peter Lee, Esq.  
John C. Courtney, Esq.  
JOHN PETER LEE LTD

FAX NO. 702-383-9950

FROM: Kathleen M. Maynard

RE: Wallace v. USAA

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COMMENTS: *Defendant/Counter-Claimant USAA Life Insurance Company Inc.'s Third Supplement to Required Initial Disclosures*

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